

1 MOLLY M. LENZ (S.B. #283867)
2 mlens@omm.com
3 DANIEL M. PETROCELLI (S.B. #97802)
4 dpetrocelli@omm.com
5 O'MELVENY & MYERS LLP
1999 Avenue of the Stars, 8th Floor
Los Angeles, California 90067-6035
Telephone: +1 310 553 6700
Facsimile: +1 310 246 6779

*Attorneys for Defendant
Paramount Pictures Corporation*

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

11 SHOSH YONAY and YUVAL YONAY,
12 Plaintiffs.

V.

1
15 PARAMOUNT PICTURES
CORPORATION, a Delaware corporation,
and DOES 1-10.

Defendants

Case No. 2:22-CV-3846-PA

**[PROPOSED] ORDER
GRANTING DEFENDANT
PARAMOUNT PICTURES
CORPORATION'S MOTION
TO DISMISS PLAINTIFFS'
FIRST AMENDED
COMPLAINT**

Hearing Date: November 7, 2022
Hearing Time: 1:30 PM
Place: Courtroom 9A
Judge: Hon. Percy Anderson

[Proposed] Order

Pending before the Court is Paramount Picture Corporation (“PPC”)'s Motion to Dismiss Plaintiffs' First Amended Complaint (“Motion”). For the reasons summarized below, the Court grants the Motion.

At the outset, Plaintiffs fail to state a claim for copyright infringement because they do not plausibly allege a substantial similarity between the original, protectable elements of PPC’s 2022 film *Top Gun: Maverick* (“*Maverick*”) and Ehud Yonay’s 1983 nonfiction article *Top Guns* (the “Article”). See *Rentmeester v. Nike, Inc.*, 883 F.3d 1111, 1117 (9th Cir. 2018). Factual information “may not . . . form the basis for a copyright claim.” *Corbello v. Valli*, 974 F.3d 965, 971 (9th Cir. 2020). The same is true for ideas, *scènes à faire*, and stock scenes and themes. See *Musero v. Mosaic Media Grp., Inc.*, 2010 WL 11595453, at *2 (C.D. Cal. Aug 9, 2020). Such unprotectable elements aside, *Maverick* and the Article are wholly dissimilar works. Among other things, they advance unrelated plots, contain different sequencing, pacing, and moods, and utilize distinct characters, themes, and dialogue. As a result, *Maverick* does not infringe on Plaintiffs’ copyright in the Article.

Because there is no substantial similarity between the Article and *Maverick*, *Maverick* is not a derivative work of the Article as a matter of law, and thus, Plaintiffs' declaratory relief claim also fails.

Finally, Plaintiffs' contract claim fares no better. Plaintiffs' assertion that Yonay's 1983 assignment of his motion picture rights in the Article to PPC (the "Assignment") obligated PPC to provide him with a credit on *Maverick* is undermined by the Assignment's unambiguous language. *See Monaco v. Bear Stearns Residential Mortg. Corp.*, 554 F. Supp. 2d 1034, 1040 (C.D. Cal. 2008) ("Resolution of contractual claims on a motion to dismiss is proper if the terms of the contract are unambiguous."). The Assignment plainly requires that a film be

1 produced under the Assignment's copyright grant before any credit obligation is
2 triggered. Dkt. 16, Ex. 2 at ¶ 7(b). Here, because *Maverick* does not use any of the
3 Article's protectible expression—and because Plaintiffs themselves allege that PPC
4 did not possess any rights under the Assignment after Plaintiffs' copyright
5 termination, Am. Compl. ¶ 37—*Maverick* necessarily was not produced under the
6 Assignment's grant. So no credit is due.

7 Accordingly, the Court hereby **ORDERS** that the Motion is **GRANTED**.
8 Plaintiffs' First Amended Complaint is hereby dismissed with prejudice.

9 **IT IS SO ORDERED.**

10

11

Dated: _____

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

The Honorable Percy Anderson
Judge, United States District Court
for the Central District of California